IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SPAREBANK 1 SR-BANK ASA,	)	
Plaintiff,	)	
v.	)	C.A. No. N19C-02-025 WCC
WILHELM MAASS GMBH A/K/A THE MAASS GLOBAL GROUP AND MAASS FLANGES CORPORATION,	)	
Defendants.		

Submitted: July 9, 2019
Decided: November 5, 2019

DEFENDANTS' MOTION TO DISMISS – GRANTED IN PART AND DENIED IN PART

MEMORANDUM OPINION

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Patricia A. Winston, Esquire; R. Eric Hacker, Esquire; Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801. Attorneys for Defendants.

CARPENTER, J.

Before the Court is Defendant Wilhelm Maass GMBH a/k/a The Maass Global Group ("Defendant" or "Maass Global") and Defendant Maass Flanges Corporation's ("Defendant" or "Maass Flanges") Motion to Dismiss pursuant to Superior Court Rules 12(b)(2), 12(b)(3), and 12(b)(6). For the reasons set forth in this Opinion, Defendants' Motion is **GRANTED** in part and **DENIED** in part.

I. FACTUAL & PROCEDURAL BACKGROUND

Plaintiff Sparebank 1 SR-Bank ASA ("Plaintiff" or "Sparebank") is a Norwegian bank with its principal place of business in Norway.[1] Maass Global is a German corporation headquartered in Essen, Germany with its principal place of business in Germany.[2] Maass Flanges is a Delaware corporation with its principal place of business in Texas and is a wholly owned subsidiary of Maass Global.[3]

This litigation arises out of Plaintiff's allegations that Maass Flanges[4] ordered, received, and failed to pay for ten shipments of custom steel components from the Norwegian Material Center of Expertise AS ("the Norwegian Company").[5] The Norwegian Company filed for bankruptcy in Norway and Plaintiff purchased their

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[1] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 1.
[2] *Id. See also* Compl. ¶ 3.
[3] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 1, 8. *See also* Compl. ¶¶ 4-5.
[4] The Plaintiff's Complaint uses "Defendants" to include both Maass Flanges and Maass Global. If Maass Global ordered and received merchandise, it would have been ordered and received in Germany and not the United States and this Court would have no jurisdiction. There is no assertion that Maass Global placed the orders to be sent to Texas. As such, the Court will assume that Maass Flanges placed the orders to be delivered to them in Texas.
[5] Compl. ¶¶ 1, 7.

claims against Maass Flanges and their parent company, Maass Global, from the bankruptcy estate.[6]

Plaintiff claims that over the course of Maass Flanges' business relationship with the Norwegian Company, it would place orders for custom steel products and the Norwegian Company would produce and ship the items to them.[7] The Norwegian Company would "invoice [Maass Flanges] for payment to be made upon shipment and delivery."[8] Plaintiff alleges that Maass Flanges placed ten orders for custom steel products costing $303,872.66, which were produced, shipped, and delivered by the Norwegian Company between September 30, 2016 and November 4, 2016.[9] Plaintiff further claims that neither Maass Flanges or Maass Global paid "any of the aforesaid invoices despite several requests for payment."[10] Maass Global argues that they did not place any of the contested orders.[11]

Plaintiffs filed suit in this Court for breach of contract, account stated, and unjust enrichment.[12] In response, Defendants filed a Motion to Dismiss, asserting *forum non conveniens* and lack of personal jurisdiction over Maass Global.[13] They argue Section 14 of Defendants' General Terms and Conditions of Purchase

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[6] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 2. *See also* Compl. ¶ 2.
[7] Compl. ¶ 8.
[8] *Id.*
[9] *Id.* ¶¶ 7-9.
[10] Compl. ¶ 12.
[11] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 1, n. 2.
[12] Compl. ¶ 6.
[13] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 3-12.

("General Terms") is a binding forum selection provision.[14] Defendants also contend that the Complaint fails to state a claim for account stated.[15] This is the Court's decision on Defendants' Motion to Dismiss.

II. STANDARD OF REVIEW

When considering a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), the Court must perform a two-step analysis. First, the Court considers "whether Delaware's long arm statute is applicable, recognizing that 10 Del. C. § 3104(c) is to be broadly construed to confer jurisdiction to the maximum extent possible under the Due Process Clause."[16] Second, the Court must "determine whether subjecting the nonresident defendant to jurisdiction in Delaware violates the Due Process Clause of the Fourteenth Amendment." "Absent an evidentiary hearing or jurisdictional discovery, the plaintiff need only make a *prima facie* showing that the exercise of personal jurisdiction is appropriate."[17] Additionally, at this stage, all allegations should be taken as true and all factual disputes should be resolved in favor of the plaintiff.[18]

When considering a motion to dismiss for improper venue pursuant to Rule

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[14] *Id.* at 3-10.
[15] *Id.* at 12-14.
[16] *Hercules Inc. v. Leu Tr. & Banking (Bahamas) Ltd.*, 611 A.2d 476, 480 (Del. 1992).
[17] *Wiggins v. Physiologic Assessment Servs., LLC*, 138 A.3d 1160, 1164-65 (Del. Super. Ct. 2016).
[18] *See Marnavi S.P.A. v. Keehan*, 900 F. Supp. 2d 377, 386 (D. Del. 2012).

12(b)(3), the Court "must assume as true all the facts pled in the complaint and view those facts and all reasonable inferences drawn from them in the light most favorable to the plaintiff."[19] However, in doing so, the Court "is not shackled to the plaintiff's complaint and is permitted to consider extrinsic evidence from the outset."[20]

When considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), the Court "must determine whether the claimant 'may recover under any reasonably conceivable set of circumstances susceptible of proof.'"[21] It must also accept all well-pleaded allegations as true, and draw every reasonable factual inference in favor of the non-moving party.[22] At this preliminary stage, dismissal will be granted only when the claimant would not be entitled to relief under "any set of facts that could be proven to support the claims asserted" in the pleading.[23]

III. DISCUSSION

A. Personal Jurisdiction

Defendants assert that this Court lacks personal jurisdiction over Maass Global. Because this Defendant is a German corporation headquartered in Essen,

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[19] *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. Ct. Mar. 31, 2009).
[20] *Id.* (quoting *Halpern Eye Associates, P.A. v. E.A. Crowell & Associates, Inc.*, 2007 WL 3231617, at *1 (Del. C.P. Sept. 18, 2007)).
[21] *Sun Life Assurance Co. of Can. v. Wilmington Tr., Nat'l Ass'n*, 2018 WL 3805740, at *1 (Del. Super. Ct. Aug. 9, 2018) (quoting *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).
[22] *Id.*
[23] *See Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at *3–4 (Del. Super. Ct. Apr. 16, 2014) (citing *Clinton v. Enter. Rent–A–Car Co.*, 977 A.2d 892, 895 (Del. 2009)).

Germany with its principal place of business in Germany, Delaware can only exercise personal jurisdiction if permitted by its long arm statute, which Maass Global claims would be improper.[24] Maass Global argues that the "sole mention of Delaware in the Complaint is Maass Flanges' incorporation in the State," and as a result, the pleadings are insufficient to establish personal jurisdiction over Maass Global.[25]

In response, Plaintiff claims that jurisdictional discovery will show that Maass Flanges "is a mere alter ego of its German parent;" in which case, Plaintiff argues that the Court could exercise general personal jurisdiction over the German parent, Maass Global.[26] Accordingly, Plaintiff "requests an opportunity to conduct limited Discovery to ascertain whether there is a sufficient basis to assert general jurisdiction" over Maass Global.[27]

Pursuant to Section 3104(c)(4) of Title 10 of the Delaware Code, it is proper for the Court to exercise general jurisdiction when a nonresident defendant "regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed

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[24] Del. Code Ann. 10 § 3104(c).
[25] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 11.
[26] Pl.'s Answering Br. in Opp'n to Defs.' Mot. to Dismiss at 14 (". . . whose principals constitute the entire Board of Directors of the Delaware subsidiary, whose decisions on all substantive matters control the Delaware subsidiary, and whose decisions have rendered the Delaware subsidiary undercapitalized and, therefore, not in a position to satisfy" a judgment).
[27] *Id.* at 14.

in the State."[28] When the Court has general jurisdiction over a nonresident defendant, the Court may exercise jurisdiction "regardless of whether there is a nexus between the claim and the defendant's Delaware contacts."[29] This can only occur upon a "showing that defendant or its agent, through more than minimum contacts, is 'generally present' in the forum state,'" such that the defendant's activities in the forum are "continuous and systematic."[30]

On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that the Court has personal jurisdiction over the defendants.[31] Generally, the Court will "'allow discovery on jurisdiction in order to aid the plaintiff in discharging that burden.'"[32] However, if the plaintiff's assertions of personal jurisdiction lack "the minimum level of plausibility needed," the Court may dismiss without permitting discovery.[33]

In the instant matter, Plaintiff has failed to plead sufficient facts to establish personal jurisdiction over Maass Global. Plaintiff does not allege that Maass Global has had any contact with Delaware beyond the claim that its subsidiary, Maass

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[28] Del. Code Ann. 10 § 3104(c)(4).
[29] *See also Herman v. BRP, Inc.*, 2015 WL 1733805, at *3 (Del. Super. Ct. Apr. 13, 2015).
[30] *Belden Techs., Inc. v. LS Corp.*, 829 F. Supp. 2d 260, 266-67 (D. Del. 2010). *See also Herman,* 2015 WL 1733805, at *4 ("[I]n order to assert general jurisdiction, the defendant's activities in the forum must be continuous and substantial.") (internal quotations omitted).
[31] *Degregorio v. Marriott Int'l, Inc.*, 2018 WL 3096627, at *5 (Del. Super. Ct. June 20, 2018).
[32] *Id.* at *6 (quoting *Compagnie Des Bauxites de Guinee v. L'Union Atlantique S.A. d'Assurances*, 723 F.2d 357, 362 (3d Cir. 1983)).
[33] *Hart Holding Co. Inc. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 540 (Del. Ch. 1991) ("[Q]uestions of this kind are inherently highly particular."); *see also Otto Candies, LLC v. KPMG LLP*, 2019 WL 994050, at *4 (Del. Ch. Feb. 28, 2019).

Flanges, is organized in Delaware. Although Maass Global is the parent of Maass Flanges, "the mere fact that a non-Delaware corporation owns a Delaware subsidiary is not sufficient in itself to justify Delaware's exercise of personal jurisdiction over the non-Delaware parent."[34] Furthermore, there is nothing to suggest they had any contacts with Delaware, let alone the minimum contacts required to obtain jurisdiction.

Even if the Court were to accept Plaintiff's unsupported claims that discovery would reveal "Defendant Maass Flanges is a mere alter ego of its German parent,"[35] the Court lacks jurisdiction to hear such claims because the Delaware Court of Chancery "has sole jurisdiction over actions to 'pierce the corporate veil.'"[36] Accordingly, all claims against Maass Global are dismissed for lack of personal jurisdiction and the Court will limit the remaining analysis to Maass Flanges.

B. *Forum Non Conveniens*

Maass Flanges argues that this action should be dismissed based on *forum non conveniens* because the suit has little or no connection to the filing forum.[37] They assert that their "burden [to prove overwhelming hardship] is not as great when the

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[34] *ACE & Co. v. Balfour Beatty PLC*, 148 F. Supp. 2d 418, 422–23 (D. Del. 2001) (citing *Papendick v. Robert Bosch GmbH*, 410 A.2d 148, 152 (Del. 1979)).
[35] Pl.'s Answering Br. in Opp'n to Defs.' Mot. to Dismiss at 14.
[36] *Mktg. Prod. Mgmt., LLC v. HealthandBeautyDirect.com, Inc.*, 2004 WL 249581, at *3 (Del. Super. Ct. Jan. 28, 2004).
[37] *See* Defs.' Opening Br. in Support of Their Mot. to Dismiss at 4.

[P]laintiff is forum shopping and does not reside in Delaware."[38] Maass Flanges emphasizes that all proof and witnesses are located outside of Delaware, specifically in Texas, Germany, or Norway.[39] As such, they claim discovery could be especially problematic due to Article 23 of the Hague Convention, which permits signatory states, including Germany and Norway, to disallow pre-trial discovery.[40] Maass Flanges further avers that "Plaintiff will need to depose and call employees of [Maass Flanges] and potentially those of the Norwegian Company," but they do not identify any specific witnesses that Maass Flanges intends to call to testify that would be unavailable for compulsory process.[41] Additionally, Maass Flanges claims that the forum selection provision contained within their General Terms identifies Texas as the required forum.[42]

In response, Plaintiff asserts that the Norwegian Company had not ever seen, let alone agreed to, the General Terms, which are not referenced in any of the Purchase Agreements and, therefore, should not be considered.[43] Further, Plaintiff claims that Maass Flanges has failed to establish that litigation in Delaware would cause an overwhelming hardship.[44] Moreover, they argue that by incorporating Maass Flanges in Delaware, they "implicitly . . . acknowledged and announced that,

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[38] *Id.* at 5.
[39] *Id.* at 6.
[40] *Id.*
[41] *Id.* at 7.
[42] *Id.* at 3.
[43] Pl.'s Answering Br. in Opp'n to Defs.' Mot. to Dismiss at 10.
[44] *Id.* at 4.

absent compelling circumstances to the contrary, this Court is an appropriate forum."[45] Plaintiff concedes that the availability of witnesses may be a challenging factor in this forum, but maintains that it would be challenging regardless of whether the action had been filed in Texas, Germany, or Norway.[46] Moreover, Plaintiff argues that this Court is well suited to apply whatever substantive law is deemed appropriate, likely Texas, Germany, or Norway, and so the choice of law "does not pose a unique or insurmountable burden," such that it would create overwhelming hardship.[47]

First, the Court finds that even if Plaintiff was bound by Maass Flanges' General Terms, they do not bear on the appropriate forum to resolve disputes.[48] Section 14 of the General Terms for Maass Flanges simply indicates that (1) "Texas law shall exclusively apply to all legal relations between the supplier and us even if the supplier has his registered office abroad" and (2) "Place of jurisdiction and place of performance for merchants is Harris County, Texas."[49] The Court believes that this provision does not sufficiently articulate that the contracting parties have affirmatively agreed that all disputes between them must be filed in Texas. As such, it does not alter the *forum non conveniens* analysis.

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[45] *Id.*
[46] *See id.* at 5.
[47] *Id.*
[48] At this time, the Court does not make any decision as to the applicability of the General Terms to the Plaintiff.
[49] Declaration of David H. Cook, Defs.' Ex. 1.

The doctrine of *forum non conveniens* allows a court to decline adjudication of a suit that was first-filed in Delaware when litigation in that forum would cause "overwhelming hardship."[50] Courts apply the following *Cryo-Maid* factors as a framework to analyze the hardship alleged by defendants:

> (1) the relative ease of access to proof;
> (2) the availability of compulsory process for witnesses;
> (3) the possibility of the view of the premises;
> (4) whether the controversy is dependent upon the application of Delaware law which the courts of this State more properly should decide than those of another jurisdiction;
> (5) the pendency or nonpendency of a similar action or actions in another jurisdiction; and
> (6) all other practical problems that would make the trial of the case easy, expeditious and inexpensive.[51]

Defendants have the high burden of establishing "with *particularity* that they will be subjected to overwhelming hardship and inconvenience if required to litigate in Delaware."[52] It is not relevant to the hardship analysis whether "another court would be a 'more appropriate forum.'" [53] Defendants must show that this "is one of the rare cases where the drastic relief of dismissal is warranted based on a strong showing that the burden of litigating in this forum is so severe as to result in manifest hardship to the defendant."[54] Additionally, courts are permitted to "weigh the

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[50] *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1199 (Del. 1997).
[51] *Id.* at 1198-99 (citing *Gen. Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681 (1964)).
[52] *Id.* at 1199 (emphasis added).
[53] *Mar-Land Indus. Contractors, Inc. v. Caribbean Petroleum Ref., L.P.*, 777 A.2d 774, 779 (Del. 2001) (quoting *Ison v. E.I. DuPont de Nemours & Co.*, 729 A.2d 832, 838, 842 (Del. 1999) ("Our jurisprudence makes clear that, on a motion to dismiss for *forum non conveniens,* whether an alternative forum would be more convenient for the litigation, or perhaps a better location, is irrelevant.").
[54] *Id.* at 778-79.

efficient administration of justice and analogous considerations under the rubric of 'other practical considerations'" in their assessment of hardship.[55] This analysis remains the same even when the "only connection to Delaware is the fact that the defendant is a Delaware entity,"[56] although the presumption that the plaintiff's choice of forum is suitable may be given less weight in cases of foreign national plaintiffs.[57]

First, the Court recognizes that none of the evidence in this case is located in Delaware. All of the evidence is located in either Texas, Germany, or Norway, which affects the relative ease of access to proof.[58] Although this factor weighs in favor of dismissal, it is not conclusive, especially when Maass Flanges failed to identify any particular evidence that would be inaccessible if the litigation proceeds in this forum. In *Warburg*, the Court found that defendants failed to establish that they would suffer overwhelming hardship if forced to litigate in Delaware, even though all evidence and witnesses were located exclusively in Germany and England.[59] Similarly, although the evidence and witnesses are located outside of this forum, Maass Flanges has not identified any evidence or witnesses that would be so difficult to

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[55] *Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102, 1113 (Del. 2014), as revised (Mar. 4, 2014).
[56] *Mar-Land Indus. Contractors, Inc.*, 777 A.2d at 780.
[57] *Martinez*, 86 A.3d at 1108 ("Under our case law precedent, the presumption that the plaintiff's choice of forum should be respected 'is not as strong in the case of a foreign national plaintiff as in the case of a plaintiff who resides in the forum.'") (internal citations omitted).
[58] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 6.
[59] *See Warburg, Pincus Ventures, L.P. v. Schrapper*, 774 A.2d 264, 267, 270 (Del. 2001) (finding dismissal based on *forum non conveniens* was not appropriate, even though all witnesses and evidence were located in other countries).

access such that they would be unavailable. While some evidence may be in Texas, the same hurdles will be present for evidence in Germany or Norway, regardless of where the case is litigated. As such, the Defendants have not established the relative ease of access to proof creates such overwhelming hardship sufficient to preclude litigating in this forum.

Additionally, Maass Flanges failed to state with particularity any witnesses outside the scope of this Court's compulsory process that would cause the Defendant hardship if they are unavailable to testify. Maass Flanges asserts only that "*Plaintiff* will need to depose and call employees of Defendants and potentially those of the Norwegian Company," which is not relevant to establishing hardship to the Defendant.[60] Again, Maass Flanges has failed to identify any particular witnesses, such as those individuals who may have knowledge of the 2016 transactions with the Norwegian Company, who would be unavailable to testify in the absence of compulsory process or who would be required to be produced as an officer of the company. Without more particularity, this fails to establish overwhelming hardship.

Although Maass Flanges further claims that discovery under Article 23 of the Hague Convention may be "particularly problematic," they fail to satisfy their burden of establishing with particularity any specific hardships they will suffer if

[60] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 7 (emphasis added).

compelled to litigate in this forum.[61] It is not considered overwhelming hardship solely because discovery must be conducted within the parameters of the Hague Convention.[62] These "bare allegations of inconvenience"[63] are insufficient to support a particularized showing of overwhelming hardship.

Next, both parties appear to agree that this suit is likely not dependent on the application of Delaware law. Plaintiff suggests that "it would likely be Norwegian law" that the Court will be asked to apply to the instant matter and Maass Flanges proposes that German or Texas law should apply.[64] Maass Flanges' contention that "[t]his, in and of itself, is fatal to Plaintiff"[65] is incorrect. While Delaware courts have recognized that there may be practical difficulties created by interpreting law in a foreign language, courts here are often asked to do so due to the state's unique incorporation practice. It is true that at times this presents unique issues that warrant dismissal. In *Martinez*, the Court dismissed a suit based on *forum non conveniens*, focusing on the fact that "a Delaware court was being asked to decide complex and unsettled issues of Argentine tort law, based on expert testimony extrapolating from

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[61] *Id.* at 6.
[62] *Warburg, Pincus Ventures, L.P.*, 774 A.2d at 271 ("We agree with the trial court's conclusion that Warburg [defendant] has not demonstrated with particularity that true hardship would result if it is forced to resort to Hague Convention procedures to obtain discovery.").
[63] *Taylor*, 689 A.2d at 1199.
[64] Pl.'s Answering Br. in Opp'n to Defs.' Mot. to Dismiss at 8. *See* Defs.' Opening Br. in Support of Their Mot. to Dismiss at 2.
[65] Defs.' Reply Brief in Further Support of Their Mot. to Dismiss at 3.

sources of law expressed in a foreign language."[66] However, *Martinez* can be distinguished from the instant matter because it involved "a difficult and open issue of Argentine law" that was best suited to be addressed by an Argentine court, which heightened the language issue.[67]

Here, the Court is not being asked to decide novel and open questions of foreign law. This case involves a breach of contract claim, an unjust enrichment claim, and an account stated claim, none of which will compel the Court to decide unsettled questions of foreign law. As such, the language barrier alone is less significant and hardship stemming from "the expense and inconvenience of translating pertinent legal precedent (assuming German [or Norwegian] law applies), retaining foreign lawyers, and producing foreign law experts to testify at trial" is given less weight.[68] It appears this is not a legally difficult case. Goods were ordered and allegedly not paid for. It is difficult to imagine that the law is significantly different in Texas from what it is here. Accordingly, this fails to meet the high burden required to establish overwhelming hardship.

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[66] *Martinez*, 86 A.3d at 1108-10 ("If, as our jurisprudence holds, significant weight should be accorded the neutral principle that important and novel issues of Delaware law are best decided by Delaware courts, then it logically follows that our courts must acknowledge that important and novel issues of other sovereigns are best determined by their courts where practicable.").

[67] *Id.* at 1108-11 ("Thus, where, as here, the plaintiff in the case is a citizen of a foreign state whose law is at issue, and where, as here, the injury in the case occurred in that foreign state, and the case turns on unsettled issues of foreign law, a trial court may permissibly exercise its discretion" to dismiss for *forum non conveniens*.); *see also Taylor*, 689 A.2d at 1200 ("The application of foreign law is not sufficient to warrant dismissal under the doctrine of *forum non conveniens*.").

[68] *Warburg, Pincus Ventures, L.P.*, 774 A.2d at 271 ("[W]e do not think the trial court erred in giving little weight to this argument in the context of the overwhelming hardship analysis.").

Likewise, other practical concerns, such as the efficient administration of justice, do not establish overwhelming hardship. "Delaware courts are accustomed to deciding controversies in which the parties are non-residents of Delaware and where none of the events occurred in Delaware."[69] The fact that this suit involves multinational parties and events that took place outside the forum is not sufficient to warrant dismissal. This Court can, and has, efficiently and justly decided cases involving foreign parties without overwhelming hardship.

Finally, the other *Cryo-Maid* factors do not weigh in favor of dismissal. As this is a first-filed case, there are no other actions pending and Plaintiff's "choice of forum will be respected and rarely disturbed, even if there is a more convenient forum to litigate the claim."[70] Candidly, the same significant issues and concerns will occur regardless of whether the litigation was filed in Texas, Germany, or Norway, and the Court can find no reason not to honor the Plaintiff's choice of venue. Therefore, based on an assessment of the *Cryo-Maid* factors, this Court finds that Defendants have not established overwhelming hardship and this is not one of the rare cases in which dismissal based on *forum non conveniens* is appropriate.

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[69] *Taylor*, 689 A.2d at 1200.
[70] *Lisa, S.A. v. Mayorga*, 993 A.2d 1042, 1047 (Del. 2010).

C. Account Stated Claim

Maass Flanges argues that Plaintiff fails to properly set forth a claim for account stated because the Complaint "does not make any factual allegation that [Maass Flanges] stated or admitted to owing a specific sum on the account to Plaintiff or to the Norwegian Company."[71] Maass Flanges contends that Plaintiff "has no support for its account stated claim" and is using the claim as a "fishing expedition to see if a wrong has been committed."[72] Accordingly, Maass Flanges requests the Court dismiss the claim without permitting discovery.

In response, Plaintiff maintains that they have sufficiently pled a claim for account stated and that discovery will reveal that Maass Flanges "acknowledged at some point an obligation to pay a past debt."[73] Plaintiff asserts that neither Sparebank nor the Trustee in Bankruptcy "were privy to the correspondence and oral communications" between Maass Flanges and the Norwegian Company, which is why further inquiry into the "factual circumstances that form the basis for account stated" is necessary.[74]

In order to bring a claim for account stated, a plaintiff must allege the following: "(1) an account existed between the parties; (2) the defendant stated or

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[71] Defs.' Opening Br. in Support of Their Mot. to Dismiss at 13.
[72] Defs.' Reply Br. in Further Support of Their Mot. to Dismiss at 8.
[73] Pl.'s Answering Br. in Opp'n to Defs.' Mot. to Dismiss at 17.
[74] *Id.* at 16.

admitted to owing a specific sum on the account to the plaintiff; and (3) the defendant made this admission after the original account or debt was created."[75] There must be an agreement, subsequent to the creation of the debt, "that the debtor owed a certain sum and there must be a valid underlying indebtedness upon which the account stated rests."[76] Further, the "complaint must provide facts that the defendant stated or admitted to owing a specific sum on the account to the plaintiff."[77]

In the instant matter, Plaintiff alleges that an account existed between the parties based on an express or implied agreement that Maass Flanges would pay for the steel products ordered between September 30, 2016 and November 4, 2016.[78] However, the Complaint makes no allegations that Maass Flanges stated or admitted to owing a specific sum on the account. A claim for account stated cannot survive without this factual basis. Accordingly, there are insufficient factual allegations to support a claim for account stated and it is dismissed for failure to state a claim. If such information is found during discovery, the Plaintiff is free to move to again include this allegation.

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[75] *Citibank (S. Dakota) N.A. v. Santiago*, 2012 WL 592873, at *2 (Del. C.P. Feb. 23, 2012) (citing *Chrysler Corp. v. Airtemp Corp.*, 426 A.2d 845, 849 (Del. Super. Ct. 1980)).
[76] *Id.*
[77] *Id.*
[78] Compl. ¶ 23.

IV. CONCLUSION

For the foregoing reasons, Defendant Maass Global is dismissed from the litigation. Otherwise, the Motion to Dismiss based on *forum non conveniens* is **DENIED** and the Motion to Dismiss the claim for account stated is **GRANTED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.